IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18904 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE ANANT S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHIRAG JAGDISH AGRAWAL - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
M/S THAKKAR ASSOC. for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,
M IA SHAIKH for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE ANANT S.DAVE

Date : 26/10/2005

ORAL JUDGMENT

1. This petition is filed under article 226 of the Constitution of India challenging the order dated 30.08.2005 passed by respondent no.2, District Magistrate, Kutchh-Bhuj in exercise of powers under Sub-section (2) of Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 detaining the petitioner with a view to prevent him from acting in any manner prejudicial to the maintenance of supplies of essential commodities for public distribution System that is petroleum products. He has challenged the impugned order on the ground that the same is violative of Articles 14, 19, 21, 22 and 226 of the Constitution of India. The order of detention, alongwith the grounds supplied revealed about

illegal and criminal activities of the detenue, being indulged into black-marketing and profiteering of motor-spirit and high-speed diesel, commodity, use of which is regulated by the Gujarat Essential Commodities (License Control and Stock Declaration) Order, 1981 and Motor Spirit and High-speed Diesel (Regulation of Stock Supply and Prevention of _____) Act, 1998 (Supply Distribution Control and _____). After following the procedure of seizure, recording of statements and after noticing the fact that First Information Report Nos. I.C.R.No.106/05 dated 27.08.2005 is registered at Mundra Police Station against the petitioner, the petitioner was arrested on 27.08.2005 and two days' police remand was granted by the concerned court. It was found that as per requirement of Rules and condition of the licence no petroleum product can be purcyhased or stored without any authority and the petitioner has unauthorizedly indulged into

such activities, and therefore, license no.142 of 2003 came to be suspended for a period of 90 days vide order dated 29.08.2005. Collectively it was found by the Detaining Authority that to prevent the detenue from indulging into such activities of black-marketing, exercise of powers under this Act, is imperative and order of detention is passed.

2. The challenge, to the said order, is restricted by the learned advocate for the petitioner on the ground that the detaining authority has in Para-4 all the grounds supplied alongwith the order of detention, specifically relied upon and considered I.C.R.No.106 of 2005 registered at Mundra Police Station on 17.08.2005 and also noticed arrest of the detenue and grant of police remand for a period of two days' by the Court, therefore, Shri Deepak Thakkar, learned advocate for the petitioner, has submitted that

having noticed the fact about the police remand of the petitioner, the concerned authority has not applied its mind to the relevant aspects that under what circumstances the detenue can indulge into such activities of black-marketing and profiteering of essential commodities. In support of his arguments, he has relied upon the case of **Amritlal and other Vs. Union Government through Secretary, Ministry of Finance and Ors**. reported at **AIR 2000 SC 3675** and relying upon the said decision he submitted that it was obligatory on the part of detaining authority, before passing the order of detention to satisfy himself all the likelihood of the petitioner being released on bail and thus, also has to be based on cogent and relevant materials. In the facts and circumstances of the present case, the above aspect is not considered, and therefore, the order of detention requires to be quashed and set aside.

3. Learned A.G.P.Mrs. Hansa B. Punani has allegedly referred to the grounds of detention and submitted that the detenue has indulged into large scale irregularities and unauthorisedly disposed of articles which was meant for distribution. She has submitted that the activities of the detenue can certainly be said to be prejudicial in disrupting the supply of essential commodities, and also tried to justify that there was no delay in passing the order of detention, since the criminal proceedings were taken against him. Therefore, according to her, the concerned authority has considered exercise of powers under this Act, has the only remedy to prevent the detenue from indulging into illegal activities. She has submitted that release of the detenue on bail by the Competent Court on and even suspension of licence of the shops are not adequate and considering this aspect the

authority has exercised powers to detain the detenue under the Act. Lastly she has submitted that the prejudicial activities of the detenue as reflected in grounds supplied alongwith the order of detention sufficiently justifying the exercise of powers by the detaining authority.

4. Having considered the fact of the case, rival submissions alongwith the affidavit in reply and on perusal of all the records, I am inclined to accept the contention of learned advocate for the petitioner and it is evident from ground no.4 supplied to the detenue alongwith the order of detention that the petitioner is under arrest on 27.08.2005 and granted police remand by the court. In spite of this, the detaining authority has failed to apply its mind the aspect, whether the detenue is likely to continue the same illegal activities in future also and reliance placed by the learned advocate for the petitioner in

the case of **Amritlal (Supra)** is well founded. Even the subjective satisfaction of the detaining authority stands vitiated on the ground that license of the detenue suspended on 29.08.2005 i.e. day prior to the date of passing the order of detention and to this aspect also when the supply of the essential comodities to given to the detenue by the District Supply Officer, remains suspended in what manner the detenue can indulge into similar illegal activities of the black marketing and profiteering, remains unexplained. The aspect about cancellation of license etc. available under the Act is also not considered and on this ground also the order impugned requires to be quashed and set aside.

5. In such circumstances, only reasoning of conclusion of detaining authority about inadequacy of the detrimental action is nothing

but ipse dixit of the officer, and, therefore, this Court observed as held in Para-6 of the judgment dated 09.12.2004 in S.C.A.No.13089/2004 rendered by the learned Single Judge of this Hon'ble Court.

> “ The grounds of detention show that the petitioner was a licence holder. He could not have purchased crude, kerosene or volatile kerosene from open market not could have sold the same in black market after suspension of licence. The apprehension in the mind of the detaining authority that immediate prevention of black marketing activity of the petitioner could be secured only by passing order for preventive detention is nothing, but his imagination. No doubt if alternative remedies were under consideration before the detaining authority and were actually considered this Court will not interfere in subjective satisfaction of the detaining authority. However, if the detaining authority has considered the alternative remedy in apparently, arbitrary manner without considering how a kerosene or purified kerosene to sell it in black

market it would not be in the interest of justice for this Court to put a blank seal to such arbitrary subjective satisfaction of the detaining authority. On the face of the record the subjective satisfaction of the detaining authority on this point suffers from non application of mind to the material on record and is certainly arbitrary."

6. In the above circumstances, on this ground alone, the order of detention dated 30.08.2005 requires to be quashed and set aside and accordingly the same is quashed and set aside. The detenue is hereby ordered to be set at liberty forthwith if he is not required in any other case by any other authority. Rule is made absolute. Direct Service permitted.

(ANANT S. DAVE, J.)

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